(27)

No. 05-1157

In the Supreme Court of the United States

CREDIT SUISSE SECURITIES (USA) LLC, ET AL.,

Petitioners,

v.

GLEN BILLING, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 8, 2006
CERTIORARI GRANTED DECEMBER 7, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re Initial Public Offering Antitrust Litigation

No. 01 Civ. 2014 (WHP)

RELEVANT DOCKET ENTRIES

No.	Date	General Description
1	03/09/01	Class Action Complaint [*Billing* v. *Credit Suisse First Boston Corp.*]
44	10/29/01	Case Management Order No. 1, the actions 01 Civ. 2014 et al. are consolidated for all purposes pursuant to the provisions of Rule 42 of the FRCP. This Court designates the following firms to serve as the Plaintiffs' Executive Committee in the litigation: Lovell & Stewart LLP; Milberg Weiss Bershad Hynes & Lerach LLP, Sirota & Sirota LLP; Schiffrin & Barroway LLP; and Wolf Haldenstein Adler Freeman & Herz, LLP.
57	01/02/02	Amended Class Action Complaint by Glen Billing et al.
93	05/23/02	Order granting Milton Pfeiffer's motion to assert a claim under the Robinson-Patman Act; order granting defendants' motion to stay all discovery
95	05/28/02	Notice of Joint Motion by Credit Suisse Corp. et al. to dismiss consolidated amended complaint

No.	Date	General Description
96	05/28/02	Joint Memorandum of Law by Credit Suisse Corp. et al. in support of joint motion to dismiss the federal law claims
97	05/28/02	Declaration of Jon R. Roellke in support of defendants' joint motion to dismiss the federal law claims
98	05/28/02	Joint Memorandum of Law by Credit Suisse Corp. et al. in support of joint motion to dismiss the state law claims
99	05/28/02	Declaration of Fraser L. Hunter, Jr. in support of defendants' joint motion to dismiss consolidated amended complaint
103	07/08/02	Memorandum of Law by Glen Billing in opposition to joint motion to dismiss the state law claims
105	07/08/02	Affidavit of J. Douglas Richards in opposition to defendants' joint motion to dismiss the state law claims
106	07/08/02	Response by Glen Billing to joint motion to dismiss the federal law claims
107	07/08/02	Declaration of Cole Clayton in opposition to defendants' joint motion to dismiss the federal law claims
110	07/09/02	Memorandum of Law by Milton Pfeiffer in opposition to joint motion to dismiss consolidated amended complaint
102	07/10/02	Transcript of proceedings held on May 16, 2002

No.	Date	General Description
117	07/25/02	Plaintiffs' corrected response to motion to dismiss the federal law claims
113	08/07/02	Joint Reply Memorandum by Credit Suisse Corp. et al. in support of joint motion to dismiss consolidated amended complaint
114	08/07/02	Joint Reply Memorandum by Credit Suisse Corp. et al. in support of joint motion to dismiss consolidated amended complaint
115	08/07/02	Declaration of Robert B. McCaw in support of defendants' joint motion to dismiss consolidated amended complaint
142	07/22/03	Memorandum of Law of the SEC as amicus curiae [filed 12/20/02]
124	12/20/02	Memorandum of the United States as amicus curiae
128	01/24/03	Letter by Glen Billing regarding new authorities
129	01/24/03	Letter by SEC regarding Second Circuit decisions that support the SEC's legal arguments and recent enforcement action filed by the SEC
133	01/28/03	Corrected Letter by Plaintiffs' Executive Committee addressing implied immunity in light of two recent Second Circuit decisions
138	02/04/03	Letter by Credit Suisse Corp. et al. regarding immunity argument

No.	Date	General Description
134	02/05/03	Letter by Milton Pfeiffer concerning recent decisions
137	02/05/03	Letter by State of New York as amicus curiae regarding antitrust immunity issue
139	02/13/03	Letter by Credit Suisse Corp. et al. responding to submission by State of New York
149	11/03/03	Memorandum and Order granting joint motion to dismiss consolidated amended complaint against all defendants with prejudice
150	11/05/03	Judgment dismissing this action on the grounds of implied immunity with prejudice as against all defendants; accordingly, the case is closed
151	11/18/03	Notice of Motion by Glen Billing to reconsider dismissal of the state law claims
152	11/18/03	Memorandum of Law by Glen Billing in support of motion to reconsider dismissal of the state law claims
154	12/02/03	Notice of Appeal by Glen Billing et al.
153	12/03/03	Notice of Appeal by Milton Pfeiffer et al.
155	12/03/03	Response by BancBoston Robertson et al. to motion for reconsideration
156	04/14/04	Order denying Sherman Act Plaintiffs' motion for partial reconsideration of Court's 11/03/03 Memo. and Order

No.	Date	General Description
158	05/12/04	Amended Notice of Appeal by Glen Billing et al.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Milton Pfeiffer, et al., Plaintiffs,

v.

Credit Suisse First Boston Corp. et al., Defendants.

No. 01 CV 11420

RELEVANT DOCKET ENTRIES

No.	Date	General Description
1	12/12/01	Class Action Complaint
	12/12/01	Case referred to Judge William H. Pauley III as possibly related to 1:01cv2014
	12/27/01	Case accepted as related to 1:01cv[2014]
	01/29/02	Case closed

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Glen Billing, et al., Plaintiffs-Appellants,

v.

Credit Suisse First Boston Ltd., et al., Defendants-Appellees.

Nos. 03-9284, 03-9288

RELEVANT DOCKET ENTRIES

Date	**General Description**
05/27/04	Record on appeal index in lieu of record filed
06/23/04	Appellant Milton Pfeiffer et al., brief filed
06/23/04	Appellants Glen Billing et al., brief filed
06/23/04	Appellants Lennard Steinberg et al., special appendix filed
06/23/04	Appellants Lennard Steinberg et al., joint appendix filed
06/30/04	Amicus Curiae State of New York, brief filed
07/30/04	Appellees Citigroup Global Markets, Inc. et al., brief filed
08/20/04	Appellant Milton Pfeiffer et al., reply brief filed
09/01/04	Appellants Glen Billing et al., corrected reply brief filed
12/13/04	Case heard before Judges Oakes, Katzmann, and Wesley
01/05/05	Letter inviting the SEC to address, *inter alia*: (1) Does the SEC have the authority, under its ena-

Date	General Description
	bling statutes, to allow underwriters to engage in the alleged conduct, including a conspiracy to inflate aftermarket securities prices? (2) If not, how would judgment for plaintiffs in this case impede the SEC's ability to regulate or exempt from regulation any underwriters, securities, or transactions? (3) In light of your answers to (1) and (2), are defendants-appellees entitled to implied antitrust immunity in this action?
03/23/05	Amicus Curiae SEC post-argument letter brief filed
03/28/05	Letter inviting the United States Department of Justice Antitrust Division to address, *inter alia*: (1) Does the SEC have the authority, under its enabling statutes, to allow underwriters to engage in the alleged conduct, including a conspiracy to inflate aftermarket securities prices? (2) If not, how would judgment for plaintiffs in this case impede the SEC's ability to regulate or exempt from regulation any underwriters, securities, or transactions? (3) In light of your answers to (1) and (2), are defendants-appellees entitled to implied antitrust immunity in this action?
05/06/05	Amicus Curiae United States Department of Justice Antitrust Division, letter brief filed
05/13/05	Appellant Local 144 Nursing et al., Rule 28(j) letter received
05/20/05	Letter received from Defendants-Appellees regarding joint submission of letter in response to the SEC and DOJ letter briefs
05/26/05	Letter received from Russel H. Beatie responding to defendants-appellees' letter of 05/20/05

Date	General Description
07/27/05	Letter received from Christopher Lovell in response to appellees' letter dated 05/20/05
09/28/05	Judgment of the district court is vacated and remanded
11/02/05	Appellees' petition for rehearing and petition for rehearing en banc filed
01/12/06	Order denying petition for rehearing by Appellees Goldman, Sachs et al.
03/09/06	Order granting motion to stay the mandate by Appellees Merrill Lynch, Pierce, Fenner & Smith Inc. et al.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE INITIAL PUBLIC OFFERING:
ANTITRUST LITIGATION : 01 Civ. 2014 (WHP)
----------X

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

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This is a class action alleging violations of federal and state antitrust laws. Plaintiffs make the following allegations upon information and belief based upon the investigation of their counsel, except as to the allegations specifically pertaining to plaintiffs and their counsel.

I. SUMMARY OF ALLEGATIONS

1. During the Class Period (as defined at ¶ 25), the defendants combined, conspired and agreed to require from customers consideration in addition to the underwriters' discount (the "anti-competitive charges") for allocations of shares of initial public offerings of certain technology-related companies (*see* Exhibit A hereto)[1] and to inflate the aftermarket prices for such Class Securities, in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and state antitrust laws.

2. These technology-related companies that issued the Class Securities did not sell directly to the public the shares of their initial public offerings ("IPOs") of common stock. Instead, such companies sold their IPO stock to intermediaries known as "underwriters." The underwriters sold 100% of such IPO stock to the public during the relevant period. They did so in combinations, or "syndicates," of underwriters.

3. During 1999-2000, one or more of the defendants was the lead underwriter(s) in approximately 90% of the dollar value of the IPOs of technology-related companies and approximately 87% of the dollar value of all equity IPOs. *See* ¶ 76 n. 3. The lead underwriter substantially controls an underwriting. By virtue of the facts alleged herein, the defendants dominated or had market power in the relevant market during the Class Period. *See* ¶¶ 75-78 *infra.*

4. As further described herein, pursuant to defendants' combination, conspiracy and agreement:

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[1] Exhibit A lists "Class Securities" and related information. [Exhibit omitted.]

(a) Each defendant required customers to pay to defendants the IPO price for the relevant Class Security plus additional anticompetitive charges. *See* ¶ 6 *infra*.

(b) Each defendant required customers to agree, in order to obtain IPO shares of Class Securities, to make "tie in purchases" of such Class Securities in the aftermarket at levels above the respective IPO prices. *See* ¶ 7 *infra*.

5. Defendants commonly organized themselves into groups—known as "syndicates"—to underwrite and market IPOs. Defendants abused the preexisting practice of combining into underwriting syndicates by implementing the unlawful agreement alleged herein through such syndicates, including through "road shows", other communications, information sharing, and other aspects and work of their underwriting syndicates as alleged at ¶¶ 51-59 *infra*. Indeed, various defendants jointly agreed upon the amounts, prices and/or timing of the tie-in purchases that various customers were required to make in order to receive allocations of shares of Class Securities on initial public offerings. Moreover, with respect to the Class Securities, defendants agreed to permit the lead underwriter in each syndicate to sell all of the shares being underwritten (if deemed beneficial to further the conspiracy to inflate the aftermarket prices or to receive the anticompetitive charges or otherwise), but to pay all underwriters in such syndicate even when they did not sell any of the Class Securities. This undisclosed "centralizing" agreement further enhanced defendants' market power.

6. Defendants' unlawful combination, conspiracy and agreement and their substantial market power enabled them to extract the anticompetitive charges from their customers and Class members. The defendants agreed that customers would be required to pay to the underwriters the public offering price plus the additional consideration of the anticompetitive charges for IPO shares of Class Securities. Defendants did not disclose these anticompetitive charges in prospectuses for Class Securities. The defendants agreed that such

anticompetitive charges could take several forms. These included non-competitively determined commissions on the purchase and sale of other securities, purchases of an issuer's shares in follow-up or "secondary" public offerings (for which the underwriters would earn underwriting discounts), commitments to purchase other, less attractive securities, or the laddered purchases described in the next paragraph. Pursuant to defendants' agreement, the amount of the required consideration was frequently based upon a percentage of the profits obtained by the customer in connection with the purchase of IPO shares.

7. The defendants leveraged their extensive market power by agreeing to require that, in order to obtain IPO shares of a Class Security, customers had to place bids for and/or purchase quantities of such Class Security in the aftermarket at prices above the IPO price in order to systematically and significantly inflate the after-market prices of IPOs—a practice known as "laddering." The laddered purchases were made at the direction of defendants (or their co-conspirators) for defendants' purpose of inflating the aftermarket prices of Class Securities in order to increase defendants' revenues. Specifically, the defendants' individual and collective revenue in connection with their underwriting activity depended, among other things, on the change in a stock's price shortly following the IPO. Through the laddering practices and other elements of their unlawful agreement, defendants did cause the prices of the Class Securities to trade at significantly inflated prices on the first day of trading and thereafter in the aftermarket until the practices were publicly disclosed. The result was that defendants significantly increased their underwriting market share and created billions of dollars of additional revenues for themselves that they would not have made in the absence of their unlawful agreement. *See* ¶ 74 *infra*.

8. These laddered purchases, other purchases made by defendants and their co-conspirators, other elements of de-

fendants' unlawful agreement, and the momentum of defendants' increasing market power had a cumulative effect on the relevant market. These factors and the defendants' increasing effectiveness began consistently to inflate the trading volume and prices of the Class Securities by substantial amounts. Between 1981 and 1996, the average price increase on the first day of trading of equity IPOs was approximately 8%. As the direct result and cumulative effect of defendants' implementation of their anticompetitive agreement, during the Class Period, the average price increase on the first day of trading in Class Securities was in excess of 60% and during 1999-2000 was in excess of 70%. Moreover, defendants' agreement caused more shares to be traded and attracted more trading interest for defendants' market-making operations on the first trading day and thereafter. From 1981 until 1996, the average volume of trades on the first day of trading of IPOs in general was roughly one-third the number of shares publicly offered. This volume dramatically increased during 1999-2000.

9. Plaintiffs and Class members were injured in their business or property by defendants' violation of the antitrust laws in that plaintiffs and Class members paid the anticompetitive charges and inflated aftermarket prices caused by such unlawful agreement.

II. JURISDICTION AND VENUE

10. Plaintiffs bring this action under Section 4 of the Clayton Act, 15 U.S.C. §§ 15, for treble damages to recover for injuries sustained by plaintiffs and Class members arising from violations by defendants of the federal antitrust laws, including Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. This Court has supplemental jurisdiction over the state law claims alleged in the second and third claims for relief pursuant to 28 U.S.C. § 1367(a).

11. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c), because

each of the defendants resides, is licensed to do business or maintains an office and/or the claims arose in this District. Many of the wrongful acts alleged herein took place in this District.

12. N.Y. Gen. Bus. Law § 340 applies to the claims of all Class members. All but one of the named defendants have their principal places of business in New York. The anticompetitive scheme of the defendants was conceived, developed, agreed to and deployed in and from New York. The bulk of the defendants' underwriting services in connection with the Class Securities was performed in New York. Many members of the Class also have additional state law claims under the laws of states in which they reside other than New York.

III. PLAINTIFFS

13. Except where otherwise alleged, each plaintiff identified below purchased, among others, the Class Securities identified below during the Class Period. Except where otherwise alleged, these purchases were made in the aftermarket at the inflated prices caused by defendants' conduct.

(a) Plaintiff Mita Aggarwal, a resident of New Jersey, and Mita Aggarwal IRA purchased Ariba, Inc. securities.

(b) Plaintiff Estelle L. Augustine, a resident of Ohio, purchased Marketwatch.com, Inc. securities.

(c) Plaintiff Tom Barnett, a resident of South Carolina, purchased Ariba, Inc. securities.

(d) Plaintiff Anupkumar Bhasin, a resident of Maryland, purchased Rediff.com India, Ltd. securities.

(e) Plaintiff Glen Billing, a resident of Texas, purchased Marimba, Inc. securities.

(f) Plaintiff Joe Braswell, a resident of Maryland, purchased PlanetRx.com Inc. securities.

(g) Plaintiff Troy Brooks, a resident of Alberta, Canada, purchased Wireless Facilities, Inc. securities.

(h) Plaintiff Anita Budich, a resident of Arizona, purchased VA Linux Systems, Inc. securities.

(i) Plaintiff Thomas E. Burke, a resident of Massachusetts, purchased Storagenetworks, Inc. securities from defendant Salomon Smith Barney, Inc. on June 30, 2000.

(j) Plaintiff Don K. Burris, a resident of Georgia, purchased MP3.com Inc. securities.

(k) Plaintiff Louis Capolino, a resident of New Jersey, purchased Global Crossing, Ltd. securities from defendant Salomon Smith Barney, Inc. on February 24, 1999 and on September 14, 1999.

(l) Plaintiff Jerry Cobb, a resident of Florida, purchased iVillage, Inc. securities.

(m) Plaintiff Max Cohen, a resident of New York, purchased Starmedia Networks, Inc. securities from defendant Salomon Smith Barney, Inc. on September 8, 2000.

(n) Plaintiff Ray L. Cox, a resident of Tennessee, purchased Freemarkets, Inc. and Ventro Corp. securities.

(o) Plaintiffs Buddy and Eileen Dukeman, residents of Pennsylvania, purchased Priceline.com securities.

(p) Plaintiff Joyce Dunn, a resident of California, purchased Global Crossing, Ltd. securities from defendant Morgan Stanley Dean Witter & Co. on January 26, 2000.

(q) Plaintiff David Federico, a resident of California, purchased Navisite, Inc. securities.

(r) Plaintiff Robert Grovich, a resident of California, purchased Corvis Corp. securities.

(s) Plaintiff Joe Goldgrab, a resident of New York, purchased Gadzoox Networks, Inc. securities.

(t) Plaintiff Bob Harper, a resident of Mississippi, purchased Rhythms Netconnections, Inc. securities.

(u) Plaintiff David Hoffman, a resident of California, purchased F5 Networks Inc. securities from defendant J.P Morgan Chase Securities (then Chase H&Q) on March 6, 7 and 10, 2000, and on April 14, 2000.

(v) Plaintiff Bruce J. Jiorle, a resident of New Jersey, purchased Internet Capital Group, Inc. securities.

(w) Plaintiff H. Wayne Jones is a resident of the State of Georgia. Mr. Jones purchased at artificially inflated prices the common stock of Ariba, Inc. after the IPO for that security.

(x) Plaintiff Susan Katz, a resident of New York, purchased Liberate Technologies, Inc. securities.

(y) Plaintiff Glenn Kerr, a resident of Maryland, purchased Calico Commerce, Inc. securities.

(z) Plaintiff Irving Lassoff, a resident of Pennsylvania, purchased Net2000 Communications, Inc. securities from defendant Morgan Stanley Dean Witter & Co. on November 30, 2000.

(aa) Plaintiff Roderick Lau, a resident of the city of Calgary, Alberta, Canada, purchased Netzero, Inc. securities.

(bb) Plaintiff Elizabeth Bates Lester, a resident of Michigan, and the Elizabeth Bates Lester Trust purchased Internet Capital Group, Inc. securities from defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. on November 1, 1999.

(cc) Plaintiff James W. Lester, a resident of Michigan, and the James W. Lester Trust purchased Internet Capital Group, Inc. securities from defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. on August 30, 1999, December 22, 1999, January 10, 20000, October 10, 2000, and November 10, 2000.

(dd) Plaintiff Solomon Lissanu, a resident of Virginia, purchased Netzero, Inc. securities.

(ee) Plaintiff Raymond Litwin, a resident of Maryland, purchased Opus360 Corp. securities.

(ff) Plaintiff Local 144 Nursing Home Pension Fund, located in New York, purchased Aether Systems, Inc. from defendant Robertson Stephens, Inc. on March 21, 2000; Extreme Networks Incorporated from defendant Robertson Stephens, Inc. on March 22, 2000 and October 13, 2000 and from defendant Morgan Stanley & Co., Incorporated on October 2, 2000; and Liberate Technologies from a predecessor entity of J.P. Morgan Chase & Co. on March 6, 2000.

(gg) Plaintiffs Michele and Bill Lucia, residents of New York, purchased 50 shares of Infonet Services Corp. common stock directly from defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") as part of the Infonet IPO. In connection with this allocation, defendant Merrill Lynch, the lead underwriter for that IPO, required that Mr. and Mrs. Lucia pay anticompetitive charges, and Mr. and Mrs. Lucia did pay the anticompetitive charges, in the forms of additional purchases of this security in the aftermarket, at inflated prices and at excessive commissions. Mr. and Mrs. Lucia purchased twenty-five shares of Buy.com Inc. common stock directly from defendant Merrill Lynch as part of the Buy.com Inc. IPO. In connection with this allocation, defendant Merrill Lynch, the lead underwriter for that IPO, required that Mr. and Mrs. Lucia pay anticompetitive charges, and Mr. and Mrs. Lucia did pay the anticompetitive charges, in the forms of additional purchases of this security in the aftermarket, at inflated prices and at excessive commissions.

(hh) Plaintiff Robert Malafronte, a resident of Illinois, purchased Commerce One, Inc. and Lante Corp. securities.

(ii) Plaintiff Binh Nguyen, a resident of Washington, purchased Internet Capital Group, Inc. securities.

(jj) Plaintiff David Pazarella, a resident of New York, purchased Calico Commerce, Inc. securities.

(kk) Plaintiff Demetrios Petratos, a resident of Louisiana, purchased Autoweb.com, Inc. securities.

(ll) Plaintiff Carlos Reeberg, a resident of Arizona, purchased VerticalNet, Inc. securities.

(mm) Plaintiff Hans Reihl, a resident of Berg, Germany, purchased Digimarc Corp. securities.

(nn) Plaintiff Norman Ross, a resident of Florida, purchased iBeam Broadcasting Corp. securities from defendant Morgan Stanley Dean Witter & Co. on September 22, 2000 and on December 1, 2000.

(oo) Plaintiff Rachel Schwartz, a resident of New York, purchased Multex.com Inc. securities.

(pp) Plaintiff Mark Sculnick, a resident of New York, purchased InterTrust Technologies Corp. securities.

(qq) Plaintiff Edward Seltzer, a resident of Nevada, purchased Net2Phone Inc. securities.

(rr) Plaintiff Kenneth Shives, a resident of Pennsylvania, purchased Ariba, Inc. securities.

(ss) Plaintiff Farideh Sigari, a resident of California, purchased Selectica, Inc. securities.

(tt) Plaintiff Efriam Simcha, a resident of New York, purchased Red Hat Inc., VA Linux Systems, Inc., Microstrategy, Inc. and Priceline.com Inc. securities.

(uu) Plaintiff Henry Sklanowsky, a resident of California, purchased Priceline.com securities.

(vv) Plaintiff Robert Tarantino, a resident of New York, purchased from defendant Credit Suisse First Boston Vitria Technology, Inc. securities on September 22, 1999, October 13, 1999, January 21, 2000, April 11, 2000, July 10, 2000 and July 13, 2000.

(ww)Plaintiff Enrico Tavani, a resident of Antibes, France, purchased Optio Software, Inc. securities.

(xx) Plaintiff Robert H. Thomas, a resident of Texas, purchased Internet Capital Group, Inc. securities.

(yy) Plaintiff Anthony Voto, a resident of New York, purchased Marimba, Inc. securities.

(zz) Plaintiff Heinz Wahl, a resident of Frankenthal, Germany, purchased Doubleclick, Inc. securities.

(aaa) Plaintiff Philip Warner, a resident of Massachusetts, purchased Wireless Facilities, Inc. securities.

(bbb) Plaintiff Matthew Weiner, a resident of New York, purchased Palm, Inc. securities.

(ccc) Plaintiff Michael Weiss, a resident of Michigan, purchased Merrill Lynch B2B Internet HOLDRs Depository Receipts.

(ddd) Plaintiff Ross Wiczer is a resident of the State of Maryland. Mr. Wiczer purchased at artificially inflated prices the common stock of Priceline.com, Inc. after the IPO for that security.

(eee) Plaintiff Bert Zauderer, a resident of Pennsylvania, purchased Merrill Lynch B2B Internet HOLDRs Depository Receipts.

(fff) Plaintiff Deming Zhous, a resident of Illinois, purchased Avici Systems, Inc. securities.

IV. DEFENDANTS

14. Defendant **BEAR, STEARNS & CO. INC.**, defined to include all predecessor entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

15. Defendant **CREDIT SUISSE FIRST BOSTON CORPORATION** ("CSFB"), defined to include all predecessor entities, including, but not limited to, Donaldson Lufkin & Jenrette Securities Corporation ("DLJ") and any related DLJ entities, is a corporation organized and existing

under the laws of the Commonwealth of Massachusetts, with its principal place of business in New York, New York.

16. Defendant **DEUTSCHE BANK ALEX. BROWN** ("Alex Brown"), defined to include all predecessor entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

17. Defendant **GOLDMAN SACHS & CO.** ("Goldman"), defined to include all predecessor entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

18. Defendant **J.P. MORGAN CHASE & CO.**, defined to include all predecessor entities, including, but not limited to, Hambrecht & Quist LLC ("H&Q") and any related H&Q entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

19. Defendant **LEHMAN BROTHERS, INC.**, defined to include all predecessor entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

20. Defendant **MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.**, defined to include all predecessor entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

21. Defendant **MORGAN STANLEY & CO., INCORPORATED** ("Morgan Stanley"), defined to include all predecessor entities, including, but not limited to Morgan Stanley Dean Witter & Co. and related entities, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

22. Defendant **ROBERTSON STEPHENS, INC.** ("Robertson Stephens"), defined to include all predecessor entities, is a corporation organized and existing under the laws of the State of Delaware, with offices in New York, New York.

23. Defendant **SALOMON SMITH BARNEY, INC.**, defined to include all predecessor entities, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in New York, New York.

V. CO-CONSPIRATORS

24. Various investment banks and market makers, not named as defendants in this Complaint, participated in and knowingly and intentionally profited from the violations alleged herein and performed acts and made statements in furtherance thereof.

VI. CLASS ALLEGATIONS

25. Plaintiffs bring this action on behalf of themselves and all persons who between March 9, 1997 and December 6, 2000 (the "Class Period") purchased Class Securities on the initial public offering and paid the anticompetitive charges and/or purchased Class Securities in the aftermarket and were damaged thereby.[2]

26. Excluded from the Class are each defendant, any investment banks which participated as syndicate members in any of the Class Securities, and all co-conspirators and each of their respective officers and directors, members of their immediate families, their legal representatives, heirs, successors or assigns and any entity in which any of the defendants or any excluded person has a controlling interest. Also ex-

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[2] Plaintiffs reserve the right to amend, supplement or alter the definition of the Class in plaintiffs' class motion pursuant to Rule 23 of the Federal Rules of Civil Procedure.

cluded are all issuers of Class Securities and all officers, directors or affiliates of any issuers of the Class Securities.

27. Members of the Class are so numerous that joinder of all members is impracticable. While the precise number of members of the Class is unknown at this time, it is believed to number at least in the tens of thousands of members. Hundreds of millions of shares of Class Securities were sold by defendants to members of the Class during the Class Period.

28. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests which are contrary to or are in conflict with those of the Class that they seek to represent. Plaintiffs have retained competent counsel experienced in class action litigation of this type to protect the Class and prosecute this action vigorously.

29. Plaintiffs' claims are typical of the claims of the other members of the Class since all of their damages arise from and were caused by the same unlawful conduct engaged in by Defendants.

30. A class action is superior to other available methods, if any, for the fair and efficient adjudication of this controversy because, among other reasons, joinder of all members of the Class is impracticable. Furthermore, the expense and burden of individual litigation make it impracticable for the members of the Class individually to redress the wrongs done to them. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

31. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual Class members. Such questions include:

(a) whether defendants entered into the combination, conspiracy and agreement complained of herein;

(b) whether the alleged combination, conspiracy and agreement violated federal and state antitrust laws;

(c) whether the combination, conspiracy and agreement caused injury to the business or property of plaintiffs and the other members of the Class;

(d) the appropriate measure of damages; and

(e) whether plaintiffs and the other members of the Class are entitled to declaratory relief.

32. Because defendants have acted on grounds generally applicable to the entire Class, damages and declaratory relief are appropriate with respect to the Class as a whole.

VII. INTERSTATE TRADE AND COMMERCE, AND BACKGROUND

33. Each defendant has thousands of brokerage account customers who entrust it with various monies, properties and orders to buy securities. The customers, including plaintiffs and Class members, for whose business the defendants purportedly compete, are located throughout the United States and elsewhere. The orders and the transactions of plaintiffs and Class members in Class Securities were entered and made in interstate commerce. Defendants sold across state lines to Class Members many billions of dollars worth of Class Securities.

34. The orders and transactions of plaintiffs and Class Members include orders to buy shares in the initial public offering of or aftermarket for Class Securities.

35. IPOs are commonly conducted through investment banks as underwriters, including defendants.

36. In an IPO, underwriting investment banks typically purchase from an issuer its initial public offering of stock at a price agreed upon with the issuer. The underwriters also agree with the issuer: (a) to charge an agreed-upon underwriters' discount representing the underwriters' disclosed

compensation, and (b) to offer the entire issue of stock to the public at the sum of (1) the agreed-upon purchase price paid to the issuer, plus (2) the agreed-upon underwriters' discount and commission. This sum is the "IPO price."

37. Underwriter syndicates of investment banks developed from the need of bankers to pool capital resources in order to underwrite securities. This development was further necessitated by the passage of the Glass-Steagall Act. The conditions that justified combining into syndicates in order to underwrite IPO shares, however, no longer applied or became less pertinent by the mid-1990s due to changes in the net capital rules, dramatic increases in the capital of U.S. investment banks, and the relaxation (and eventual repeal) of Glass-Steagall.

38. Nonetheless, defendants still regularly combined with one another during the Class Period into underwriting syndicates. One or more of the defendants served as the lead or a lead underwriter of the underwriting syndicates for approximately 73% of the total dollar amount of all equity underwritings and 71% of the total dollar amount of technology-related IPOs during 1997. By virtue of their unlawful agreement alleged herein, defendants' comparable market share had grown to approximately 87% and 90%, respectively, by 1999-2000.

39. Defendants further concentrated their market power within the underwriting syndicates during the Class Period: all defendants reduced competition among themselves by agreeing that whichever of them was lead underwriter in a particular syndicate could itself distribute all the shares of each Class Security (if deemed beneficial to maximize the aftermarket prices of the Class Securities and the anticompetitive charges or for other advantages). Any member of the syndicate who did not sell the number of shares allocated to it as stated in the prospectus, or, indeed, any shares, nevertheless shared in the underwriters' discount. These procedures would be applicable reciprocally in each

syndicate for which one of the defendants was a lead underwriter. Defendants further abused their combination in syndicates by jointly concealing the centralizing agreement from customers.

40. Defendants worked individually and in concert among themselves and with co-conspirator market-makers to inject demand into the market for Class Securities and to inflate aftermarket prices. Through the foregoing steps, their unlawful agreement and other conduct, defendants increased their power in and dominated the relevant market. *See* ¶ 78 *infra*.

41. Beginning prior to March 9, 1997, and throughout the Class Period, defendants combined, conspired and agreed to require from customers the anticompetitive charges and to inflate the aftermarket prices for the Class Securities.

42. The anticompetitive charges caused the actual consideration paid to defendants for Class Securities to be greater than the IPO price and, correspondingly, inflated defendants' revenues. The defendants agreed that such anticompetitive charges could take several forms. These included non-competitively determined commissions on the purchase and sale of other securities, purchases of an issuer's shares in follow-up or "secondary" public offerings (for which the underwriters would earn underwriting discounts), commitments to purchase other, less attractive securities, or the laddered purchases described herein. Pursuant to defendants' agreement, the amount of the required consideration was frequently based upon a percentage of the profits obtained by the customer in connection with the purchase of IPO shares. Also, as defendants' combination and conspiracy evolved and became more effective, defendants' demands on their customers increased.

43. Defendants' combination, conspiracy and agreement unreasonably restrained interstate trade and commerce by inflating defendants' charges and revenues and the after-

market prices for Class Securities in billions of dollars worth of interstate transactions.

VIII. THE MAKING AND IMPLEMENTATION OF DEFENDANTS' UNLAWFUL AGREEMENT

44. Defendants had the opportunity to make and manage their unlawful agreement and monitor their compliance with the agreement through, among others, the steps and means alleged in the succeeding paragraphs.

45. During and prior to the Class Period, defendants continuously communicated and worked together as co-underwriters and members of underwriting syndicates, as market makers, and in the other capacities alleged below.

46. Also, defendants collaborated with one another in trade organizations such as the Securities Industry Association ("SIA"), including as members of SIA's Syndicate Committee. The SIA advanced defendants' individual and collective interests in increasing their revenues, reducing their costs, and inflating what the public pays to financial intermediaries.

47. Further, defendants frequently communicated with one another as members of the National Association of Securities Dealers, Inc. ("NASD") where they jointly participated in the trading of securities on the NASD's automated quotation system, commonly known as NASDAQ, and are and were members of various national and regional exchanges, including the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX"). Various defendants also combined to create various joint ventures in the securities market, including Stock Edge LLC, a stock trading vehicle for virtually all defendants, and Bond Book LLC, a bond trading system for virtually all defendants.

48. In addition to the foregoing, defendants had numerous other regular meetings, including meetings among

their top investment bankers, legal officers and marketing managers prior to and during the Class Period.

49. Defendants implemented their unlawful combination, conspiracy and agreement through and in connection with their agreements to combine together into underwriting syndicates for Class Securities.

50. Defendants conducted their underwritings together in varying combinations and worked with other defendants at multiple times during the Class Period. For example, in underwritings of Class Securities in which Goldman was the lead underwriter, CSFB was a co-underwriter more than 35 times, Morgan Stanley was a co-underwriter more than 23 times, and Robertson Stephens was a co-underwriter more than 25 times. Similarly, in underwritings of Class Securities in which CSFB was lead underwriter, Robertson Stephens was a co-underwriter more than 38 times.

51. Defendants had, through the foregoing means and others, frequent communications among themselves and with other defendants about IPOs, Class Securities, their division of revenues, the aftermarket prices of Class Securities, the anticompetitive charges and tie-purchases alleged herein and related matters.

52. During the foregoing communications and underwritings, defendants were all aware that the amount of the anticompetitive charges and future underwriting business opportunities depended upon whether, and the extent to which, the price of the newly offered common stock increased during aftermarket trading. The more that prices increased in aftermarket trading, the more that defendants' customers were attracted to IPOs and the more revenues that defendants, individually and collectively, could make from IPOs.

53. In order to implement their anticompetitive and unlawful agreement alleged herein, various defendants jointly took the steps, had the further communications, and

made the further agreements alleged in the succeeding paragraphs.

54. Defendants, jointly and individually, hosted "road shows" during which customers were introduced to the issuer and its managers and during which the offering was described. Defendants also conducted telephone calls, meetings and other regular communications prior to the IPOs of Class Securities. During, or as part of these communications, including communications separate and apart from the "road shows," defendants, at times jointly, made inquiries of customers or others interested in purchasing Class Securities concerning the number of shares that such person would be willing to purchase in the aftermarket and the prices such person would be willing to pay for such shares.

55. Representatives of different defendants discussed and communicated with each other about the requirement of tie-in purchases, the amount of increase in Class Securities prices after IPOs and related matters.

56. As part of defendants' agreement, various defendants disclosed to each other on a reciprocal basis the identities of the customers to whom they allocated, or intended to allocate, Class Securities. In order to monitor whether the customers complied with the preconditions to receiving allocations, these communications among defendants included discussions of customers' trades, as well as cooperation in supplying various data to one another and third parties.

57. In furtherance of their conspiracy, defendants jointly informed customers of the terms of the tie-in purchases that they required for participation in the IPOs.

58. Various defendants jointly used as a criterion in determining the levels of participation by non-defendant underwriters in a given syndicate whether and, if so, the extent to which, those underwriters adhered to the anticompetitive requirements described herein. With respect to defendants and non-defendant co-conspirators, the agreement was to re-

ward those underwriters from deal to deal for their adherence to the agreement on a reciprocal basis regardless of the identity of the lead underwriter.

59. Various officers, partners and employees of defendants moved to similar positions with other defendants. In their new positions, such persons continued to engage in the same unlawful conduct described herein on behalf of their new employers and the conspiracy and combination alleged herein.

60. In connection with the offering of the Class Securities, defendants pre-committed their research analysts to issue positive reports shortly following the offering (known among defendants as "booster shots") and systematically to take other steps to help sell and promote the Class Securities in the IPO and the aftermarket. At times, defendants would take other actions designed to maintain a level of credibility.

61. Throughout the Class Period, defendants and their co-conspirators all undertook other overt acts which furthered the conspiracy's objectives by inflating the prices of Class Securities in the aftermarket.

62. Defendants were required to and did have compliance procedures, practices and reports which promptly informed defendants of the amount of commissions, charges, and other payments that their customers were making and the customers' commissions-to-equity ratios and turnover ratios, and whether the customers were paying any anticompetitive charges. Defendants were all aware of the effects of their unlawful agreement upon their customers, and each defendant monitored their customers' trades and accounts from one IPO to the next to ensure that customers were paying the corresponding anticompetitive charges. Defendants provided information to and received information from paid subscription services, among others, relating to commissions paid to defendants by various customers.

63. As a result of the foregoing, and other communications, all defendants were aware that each of them was complying with their unlawful agreement. Indeed, CSFB, for example, has repeatedly and conspicuously stated that its practices in connection with IPOs during the relevant time period were consistent with the practices employed by the other underwriters.

64. In the foregoing circumstances, it was in the individual and collective revenue maximizing interests of all defendants to agree on and impose the additional anticompetitive charges and the requirement of tie-in or laddered purchases.

IX. VIOLATIONS ALLEGED

65. During the Class Period, defendants combined, conspired and agreed to require from customers the anticompetitive charges and to inflate the aftermarket prices for Class Securities.

66. Defendants shared a common motive to require their anticompetitive charges and inflate aftermarket prices of Class Securities; only by acting together and through joint action and agreement among themselves and their co-conspirators were Defendants able to require and obtain the anticompetitive charges and inflate the prices of the Class Securities after the IPOs. Such charges and inflated prices greatly increased defendants' individual and collective revenues.

67. The Defendants' combination, conspiracy and agreement was not disclosed to, approved by, or regulated by the NASD or the SEC.

68. Application of antitrust laws to the unlawful combination, conspiracy and agreement alleged herein would not subject defendants to standards of conduct that would conflict with anything in the federal securities laws or the rules or regulations of the SEC or NASD.

69. This Complaint does not challenge any statute, rule, regulation or interpretation by the SEC or any self regulatory organization, including any statute, rule, regulation or interpretation relating to price stabilization efforts (i.e., efforts in the aftermarket to retard the decline of the prices at levels below the IPO price).

X. EFFECT OF THE CONSPIRACY

70. The aforesaid combination, conspiracy and agreement had the effect, among other things, of imposing on plaintiffs and Class members an additional anticompetitive charge in order to purchase Class Securities in the initial offering.

71. The aforesaid combination, conspiracy and agreement had the additional effect, among other things, of artificially inflating the aftermarket prices and the consideration paid by plaintiffs and Class members for the Class Securities to levels above that which would have existed in a competitive market. With regard to IPOs during the Class Period of technology-related companies in the amount of $20,000,000 or more, those IPOs in which a defendant served as the lead underwriter had a first day percentage increase in price that, on average, was approximately twice as high as that of IPOs for which no defendant was the lead underwriter.

72. The aforesaid combination, conspiracy and agreement had the effect of increasing defendants' revenues.

73. The aforesaid combination, conspiracy and agreement also had the effect of injecting substantial, accumulating demand for Class Securities into the market. This injected demand and the increasing prices of the Class Securities, in turn, attracted additional customer interest in, and demand for, the Class Securities. The totality of defendants' conduct, as described herein, was specifically intended to and did have the cumulative and reinforcing effect of inflating aftermarket prices of Class Securities, drawing in more participants and

inducing them to buy or pay higher prices for Class Securities.

74. As a result of their unlawful agreement and increases in the prices of Class Securities following the offerings, defendants were able to attract dramatically more IPO business. Defendants' agreement caused more shares to be traded and attracted more trading interest for defendants' market making operations on the first trading day and thereafter. Until 1998, the average volume of trades on the first day of trading was roughly one-third the number of shares publicly offered. Average volume dramatically increased during 1998-2000. Accordingly, defendants were able to charge and make, in the aggregate, billions of dollars in additional revenues from (a) the collection of additional underwriting charges, commissions and fees, as well as the anticompetitive charges obtained in initial public offerings, (b) increased customer trading business resulting from inflated trading volumes, and (c) other sources.

XI. RELEVANT MARKET

75. Each defendant possessed a series of attributes that, collectively, permitted it to be a leading underwriter of equity IPOs. These attributes included financial and reputational capital; substantial sales and customer base; established trustworthiness and relationships; and sufficient due diligence, analytical, market making, and other specialized staff, experience and expertise. Firms that did not possess this series of attributes were not effective competitors, were not effective production substitutes and could not overcome the barriers to entry to be a leading underwriter of equity IPOs.

76. Enhancing each defendant's foregoing series of attributes, each defendant also possessed, or developed during the Class Period, a second series of attributes that, collectively and in combination with its first series of attributes alleged above, permitted it to be a leading underwriter of IPOs

of technology-related companies in the relevant market.[3] These attributes included specialized analytical and due diligence expertise in technology-related companies; sufficient staff conversant with technology companies; experience with technology-related companies; other attributes that enabled each defendant to create or adeptly employ the vocabulary, systems and valuation (or supposed valuation) methodologies that could rank, compare, and lend legitimacy to the technology-related companies; and the commitment of reputational and financial capital to build and create a market for initially selling to the public and then trading in the IPO stocks of the technology-related companies. Firms that did not possess this combination of attributes were not effective competitors, were not effective production substitutes and could not overcome the barriers to entry to be underwriters of IPOs of technology-related companies.

77. As is recognized by investors and market participants, (a) tech-related companies are a distinct market, and (b) there is a line of demarcation in underwriting between issues of IPO securities that raise less than $20,000,000 and those that raise $20,000,000 or more. Defendants did not find it cost-effective to serve and generally did not serve as lead underwriters for technology-related or other companies that issued IPO securities raising less than $20,000,000. The market for initially selling to the public and subsequently trading in IPO securities of technology-related companies which raised less than $20,000,000 is a distinct market.

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[3] A "technology-related" company includes all Class Securities and the securities of any other company that qualified for or was assigned by Thomson Financial Securities Data the following U.S. Department of Commerce Standard Industrial Classification Codes: 3571, 3572, 3575, 3577, 3578, 3661, 3663, 3669, 3674, 3812, 3823, 3825, 3826, 3827, 3829, 3841, 3845, 4812, 4813, 4899, 7370, 7371, 7372, 7373, 7374, 7375, 7378 or 7379; or was classified by Thomson Financial Securities Data as "High Tech."

78. The relevant market is the market for initially selling to the public and thereafter trading securities of issuers in technology-related companies in initial public offerings of stock listed on U.S. exchanges or over-the-counter markets in a total dollar issue of $20 million or more. In the alternative, the relevant market is the market for initially selling to the public and thereafter trading securities for all equity issuers in initial public offerings of stock listed on U.S. exchanges or over-the-counter markets raising $20 million or more.

XII. INJURY TO PLAINTIFFS AND CLASS MEMBERS

79. Plaintiffs and Class members were injured in their business or property by defendants' violations of the antitrust laws in that plaintiffs and Class members paid the anticompetitive charges and/or the inflated aftermarket prices caused by defendants' unlawful combination, conspiracy and agreement.

FIRST CLAIM FOR RELIEF FOR VIOLATION OF SECTION 1 OF THE SHERMAN ACT AGAINST DEFENDANTS

80. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 79, as if fully set forth herein.

81. Defendants entered into a combination, conspiracy and agreement in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

82. The purpose and effect of defendants' unlawful combination, conspiracy and agreement was to require plaintiffs and other members of the Class to pay anticompetitive charges to defendants and inflated prices for Class Securities in the aftermarket.

83. By reason of the foregoing, plaintiffs and the other members of the Class have been damaged in their business and property.

SECOND CLAIM FOR RELIEF FOR VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 340 AGAINST DEFENDANTS

84. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 79 above as if fully set forth herein.

85. Defendants' unlawful conduct constitutes a violation of N.Y. General Business Law § 340. Through such conduct, which defendants engaged in in New York, defendants restrained competition and the free exercise of activities in the conduct of business, trade and commerce and in the furnishing of services in New York.

86. Defendants' restraints of business, trade and commerce have substantially affected business, trade and commerce in he State of New York.

87. By reason of the foregoing, plaintiffs and the other members of the Class have been damaged.

THIRD CLAIM FOR RELIEF FOR VIOLATION OF ANTITRUST LAWS OF OTHER STATES

88. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 79 above as if fully set forth herein.

89. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Arizona Revised Stat. §§ 44-1401, *et seq.* with respect to purchases of Class Securities in Arizona.

90. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Cal. Bus. & Prof. Code § 17200, *et seq.* with respect to purchases of Class Securities in California.

91. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of D.C. Code Ann. §§ 28-4503, *et seq.* with respect to purchases of Class Securities in the District of Columbia.

92. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Fla. Stat. §§ 501.201, *et seq.* with respect to purchases of Class Securities in Florida.

93. By reason of the foregoing Defendants have entered into agreements in restraint of trade in violation of Kan. Stat. Ann. §§ 50-101, *et seq.* with respect to purchases of Class Securities in Kansas.

94. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of La. Rev. Stat. §§ 51:137, *et seq.* with respect to purchases of Class Securities in Louisiana.

95. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Me. Rev. Stat. Ann. 10, § 1101, *et seq.* with respect to purchases of Class Securities in Maine.

96. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Mass. Ann. Laws ch. 93A, *et seq.* with respect to purchases of Class Securities in Massachusetts.

97. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Mich. Comp. Laws Ann. §§ 445.773, *et seq.* with respect to purchases of Class Securities in Michigan.

98. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Minn. Stat. §§ 325D.52, *et seq.* with respect to purchases of Class Securities in Minnesota.

99. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Miss. Code. Ann. §§ 75-21-1, *et seq.* with respect to purchases of Class Securities in Mississippi.

100. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Nev.

Rev. Stat. Ann § 598A, *et seq.* with respect to purchases of Class Securities in Nevada.

101. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of New Jersey Antitrust Act, N.J. Stat. Ann §§56:9-1, *et seq.* with respect to purchases of Class Securities in New Jersey.

102. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of N.M. Stat. Ann. §§ 57-1-1, *et seq.* with respect to purchases of Class Securities in New Mexico.

103. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of N.C. Gen. Stat. §§ 75-1, *et seq.* with respect to purchases of Class Securities in North Carolina.

104. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of N.D. Cent. Code § 51-08.1-01, *et seq.* with respect to purchases of Class Securities in North Dakota.

105. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of S.D. Codified Laws Ann. § 37-1, *et seq.* with respect to purchases of Class Securities in South Dakota.

106. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Tenn. Code Ann. §§ 47-25-101, *et seq.* with respect to purchases of Class Securities in Tennessee.

107. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Vt. Stat. Ann. 9, § 2453, *et seq.* with respect to purchases of Class Securities in Vermont.

108. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of W. Va. Code §§ 47-18-1, *et seq.* with respect to purchases of Class Securities in West Virginia.

109. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Wis. Stat. § 133.01, *et seq.* with respect to purchases of Class Securities in Wisconsin.

110. Plaintiffs and members of the Class have been damaged by reason of the foregoing.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray:

a. That this action be maintained as a class action under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure;

b. That the unlawful combination, conspiracy and agreement alleged herein be adjudged, decreed and declared to be in unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and a violation of the antitrust laws of the states identified herein;

c. That plaintiffs and the Class recover damages, as provided by law, and that judgment be entered in favor of plaintiffs and the Class and against defendants in an amount to be trebled as provided by law;

d. That plaintiffs and the Class recover their costs of this suit, including reasonable attorneys' fees and expenses as provided by law; and

e. That plaintiffs and the Class be granted such other or further relief as may appear just and proper to this Court.

Dated: New York, New York
January 2, 2002

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Other Plaintiffs' Counsel

[Exhibit A and Certificate of Service omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MILTON PFEIFFER, on behalf of himself and all others similarly situated, Plaintiff, -against- CREDIT SUISSE FIRST BOSTON CORP., THE GOLDMAN, SACHS GROUP, INC., LEHMAN BROTHERS, INC., MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., MORGAN STANLEY DEAN WITTER & CO., BANCBOSTON ROBERTSON, STEPHENS, INC., SALOMON SMITH BARNEY, INC., FIDELITY DISTRIBUTORS CORPORATION, FIDELITY BROKERAGE SERVICES LLC, FIDELITY INVESTMENTS INSTITUTIONAL SERVICES CO., JANUS CAPITAL CORPORATION, COMERICA, INC. d/b/a MUNDER CAPITAL MANAGEMENT, VAN WAGONER CAPITAL MANAGEMENT, INC. and VAN WAGONER FUNDS, INC., Defendants.	:	Civil Action No. [01 CV 11420] **CLASS ACTION COMPLAINT** Jury Trial Demanded [Filed Dec. 12, 2001]

Plaintiff, Milton Pfeiffer, by his attorneys, Beatie and Osborn LLP, for his Complaint against defendants, alleges as follows.

NATURE OF THE ACTION

1. This is an antitrust class action on behalf of plaintiff and all similarly situated individuals who purchased or acquired the identified securities between January 1, 1998 and the date of the filing of this Complaint (the "Class Period").

2. In 1998 or later, defendants Credit Suisse First Boston Corp., the Goldman, Sachs Group, Inc., Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., Morgan Stanley Dean Witter & Co., Bancboston Robertson, Stephens, Inc., and Salomon Smith Barney, Inc. (collectively, the "Underwriter Defendants") paid bribes to and/or accepted bribes from defendants Fidelity Distributors Corporation, Fidelity Brokerage Services LLC, Fidelity Investments Institutional Services Co., Empire Fidelity Investments Life Insurance Co., Janus Capital Corporation, Comerica, Inc., Van Wagoner Capital Management, Inc. and Van Wagoner Funds, Inc. (collectively, the "Institutional Defendants"), exchanging favored allocations of securities in initial public offerings for obedience to particular terms and conditions governing the resale of these securities.

3. This bribery arrangement was part of a course of conduct developed by the Underwriter Defendants to inflate the price of particular securities.

4. Among the companies whose initial public offerings were part of the bribery arrangement to inflate prices were Aether Systems, Inc., Akamai Technologies, Inc., Ariba, Inc., Autoweb, Inc., Avici Systems, Inc., Calico Commerce, Inc., Clarent Corp., Covad Communications Group, Inc., Corvis Corp., Digimarc Corp., E-LOAN, Inc., eToys.com, Inc., Expedia, Inc., Freemarkets, Inc., Gadzooks Networks, Inc., Global Crossing, Ltd., Internet Capital Group, Inc., Intertrust Technologies Corp., IVillage, Inc., Kana Software, Inc., Keynote Systems, Inc., Marketwatch.com, Inc., MP3.com, Inc., Multex.com, Inc.,

Netzero.com, Inc., Palm, Inc., PlanetRX.com, Inc, Priceline.com, Inc., Razorfish, Inc., Red Hat, Inc., Rhythms NetConnections, Inc., Silverstream Software, Inc., Stamps.Com, Inc., Sycamore Networks, Inc., Tibco Software, Inc., VA Linux Systems, Inc., Wireless Facilities, Inc., and numerous additional securities (collectively, the "IPO securities").

5. As a result, when Plaintiff and the other class members purchased shares of the IPO securities, the prices of these securities were substantially inflated.

6. This conduct constituted commercial bribery and other conduct in violation of Section 2(c) of the Robinson Patman Act, 15 U.S.C. Section 13(c).

THE PARTIES

7. Plaintiff Milton Pfeiffer is an individual residing in Staten Island, New York, and was at all times during the relevant period a retail customer of defendants Merrill Lynch, Pierce, Fenner & Smith, Inc., and Morgan Stanley Dean Witter & Co.

8. On various dates in the relevant period, Plaintiff Pfeiffer bought shares of common stock of Aether Systems, Inc., Akamai Technologies, Inc., Ariba, Inc., Palm, Inc., and Sycamore Networks, Inc.

9. Defendant Credit Suisse First Boston Corp. ("CSFB") is a Massachusetts corporation, with its principal place of business at 11 Madison Avenue, New York, New York 10010.

10. During the relevant period. CSFB served as a member of the selling group and/or a co-lead underwriter for one or more of the IPO securities.

11. Defendant The Goldman, Sachs Group, Inc. ("Goldman Sachs") is a Delaware corporation, with its principal place of business at 85 Broad Street, New York, New York 10004.

12. During the relevant period, Goldman Sachs served as a member of the selling group and/or a co-lead underwriter for one or more of the IPO securities.

13. Defendant Lehman Brothers, Inc. ("Lehman") is a corporation organized under the laws of the State of Delaware, with its principal place of business in New York, New York.

14. During the relevant time period, Lehman served as a member of the selling group for one or more of the class securities.

15. Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") is a Delaware corporation, maintaining offices for the transaction of business in Smithtown, New York, as well as elsewhere within this District.

16. During the relevant period Merrill Lynch served as a member of the selling group and/or a co-lead underwriter for one or more of the IPO securities.

17. Defendant Morgan Stanley Dean Witter & Co. ("Morgan Stanley") is a Delaware corporation, maintaining offices for the transaction of business in Hauppauge, New York, as well as elsewhere within this District.

18. During the relevant period Morgan Stanley served as a member of the selling group and/or a co-lead underwriter for one or more of the IPO securities.

19. Defendant BancBoston Robertson, Stephens, Inc. ("BancBoston") is a California corporation, with its principal place of business at 555 California Street, San Francisco, CA 94104.

20. During the relevant period BancBoston served as a member of the selling group and/or a co-lead underwriter for one or more of the IPO securities.

21. Defendant Salomon Smith Barney, Inc. ("Smith Barney") is a Delaware corporation, maintaining offices for the transaction of business in Hauppauge, New York.

22. Defendant Smith Barney acquired Lehman Brothers, Inc.

23. During the relevant time period, Smith Barney, through its activities or as successor to Lehman Brothers, Inc., served as a member of the selling group and/or a co-lead underwriter for one or more of the IPO securities.

24. Defendant Fidelity Distributors Corporation ("Fidelity Distributors") is a Delaware corporation with its principal place of business at 82 Devonshire St., Boston, Massachusetts.

25. Defendant Fidelity Brokerage Services LLC ("Fidelity Brokerage") is a Delaware limited liability company with its principal place of business at 100 Summer Street, Boston, Massachusetts.

26. Defendant Fidelity Investments Institutional Services Company, Inc. ("Fidelity Institutional") is a Delaware corporation with its principal place of business at 82 Devonshire Street, Boston, Massachusetts.

27. During the relevant period, Fidelity Distributors, Fidelity Brokerage, and Fidelity Institutional were favored customers and purchasers and sellers of securities through the Underwriter Defendants and were institutional purchasers of each of the IPO securities.

28. Defendant Janus Capital Corporation ("Janus") is a Colorado corporation with its principal place of business at 100 Fillmore Street, Denver, Colorado.

29. During the relevant time period, Janus was a favored customer and purchaser and seller of securities through the Underwriter Defendants and an institutional purchaser of each of the IPO securities.

30. Defendant Comerica, Inc. is a corporation based in Detroit, Michigan, and owns approximately 94.7% of a partnership known as Munder Capital Management ("Munder"). Munder's principal place of business is at 480 Pierce Street, Birmingham, Michigan.

31. During the relevant period, Munder was a favored customer and purchaser and seller of securities through the Underwriter Defendants and was an institutional purchaser of each of the IPO securities.

32. Defendant Van Wagoner Capital Management, Inc. ("Van Wagoner Capital") is a Delaware corporation with its principal place of business at 345 California Street, Suite 2450, San Francisco, California.

33. Defendant Van Wagoner Funds, Inc. ("Van Wagoner Funds") is a Maryland corporation with its principal place of business at 345 California Street, Suite 2450, San Francisco, California.

34. During the relevant period, Van Wagoner Capital and Van Wagoner Funds were favored customers and purchasers and sellers of securities through the Underwriter Defendants and were institutional purchasers of each of the IPO securities.

35. Although plaintiff has determined that each of the institutional mutual fund administrators named in this Complaint was involved in the commercial bribery arrangement, plaintiff does not know which subsidiaries, etc., of any institutional defendant performed wrongful acts.

36. Plaintiff will ascertain this information through discovery as early as possible and make any necessary adjustments in the pleadings.

JURISDICTION AND VENUE

37. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337(a) and 15 U.S.C. §§ 15 and 26.

38. Venue is proper in this District pursuant to 15 U.S.C. § 22 because each defendant resides, or is licensed to do business, or is doing business, or transacts business in this District.

39. To carry out their arrangement defendants used the means and instrumentalities of interstate commerce, had a substantial effect on interstate trade and commerce, and unreasonably restrained interstate commerce.

CLASS ALLEGATIONS

40. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiff brings this action on his own behalf and as a class action, on behalf of all persons and entities who purchased class securities during the Class Period and were harmed by defendants' actions described below.

41. The Underwriter Defendants, the Institutional Defendants, and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant are excluded from the class.

42. This action is properly maintainable as a class action. Because thousands of individuals purchased the class securities throughout the United States, the class is so numerous that joinder of all members is impracticable.

43. Questions of law and fact common to the class predominate over questions affecting individual class members, including:

(a) did the Underwriter Defendants receive bribes from or pay bribes to the Institutional Defendants in order to ensure the escalation and maintenance of the

prices of IPO securities after the initial public offerings;

(b) did the Institutional Defendants agree to pay and in fact pay to the Underwriter Defendants a percentage of their profits from the sale of the IPO securities at inflated prices;

(c) did the Underwriter Defendants, acting as fiduciaries for plaintiff and the other class members, inflate the prices of the IPO securities, purchase the IPO securities in the aftermarket, encourage plaintiff and the other class members to purchase the IPO securities at inflated prices resulting from misconduct by defendants in the aftermarket and the market, and maximize the Institutional and Underwriter Defendants' profits on resales of IPO securities at inflated prices; and

(d) did plaintiff and other class members suffer damages as a result of defendants' conduct (if so, how much)?

44. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

45. The claims of plaintiff are typical of the claims of the other members of the class and plaintiff has the same interests as the other members of the class.

46. Plaintiff anticipates that the management of this litigation as a class action will present no difficulty.

COUNT ONE

VIOLATION OF SECTION 2(c) OF THE ROBINSON-PATMAN ACT

47. Plaintiff repeats and realleges the allegations contained in paragraphs one to forty-six of the Complaint with the same force and effect as if they were set forth here in full.

FACTUAL ALLEGATIONS

Background

48. Corporations that distribute their equity securities to the public usually sell them in a public offering through investment bankers.

49. In a typical public offering, the investment banker simultaneously purchases the securities from the offering company and/or shareholders and sells them to the public.

50. For their investment banking clients, investment bankers make, among other things, public offerings of their clients' securities to the investing public.

51. An investment banking client whose securities are not owned and traded by the public and who has never had a public offering of its securities is known as a "green" company, and the first sale of its securities to the investing public is known as an "initial public offering" ("IPO").

52. From time to time an investment banking client or a group of investment banking clients in an identifiable business will have large demand for their securities in an IPO.

53. In some IPOs the demand by the investing public for the securities of the issuer-client is great and the securities available in the public offering are oversubscribed.

54. Oversubscription occurs when "indications of interest" to purchase the securities by investors exceed the number of securities available to fill purchase orders. This kind of public offering is known as a "hot issue."

55. In the relevant period the securities subject to the greatest demand were high technology securities, particularly internet securities.

56. In the typical IPO for a "hot issue" company, the investment banker agrees with the issuer-client to purchase all the securities for the public offering from the issuer-client.

This kind of transaction is known as a "firm commitment" underwriting.

57. The period of marketing for the securities of investment banking clients-issuers after the IPO is known as the "aftermarket" or the secondary market. It has no statutory, customary, or other fixed length.

58. One of the most important market reactions for the investment banking defendants in the aftermarket is the rise of the market price of the security above the IPO price and the maintenance of higher market prices for an extended period.

59. Important to the occurrence of the rise in the price of the stock after the IPO and to the maintenance of the higher prices is continued investor desire to purchase the securities of the issuer-client.

60. The continued investor interest is marked by and proven by an excess of purchase orders over sell orders.

61. To assure that this effect occurred, the Underwriter Defendants sold large blocks of their IPO securities, as much as fifty per cent of any IPO, to selected customers with restrictive conditions.

62. The securities sold to an investor in an IPO are known in the securities trade as an "allocation."

63. Securities from a "hot issue IPO" are allocated by the investment banking firms to the various customers on a discretionary but highly selective basis.

64. A customer who sells his allocation of securities within twenty-four to forty-eight hours after purchasing them on the effective date of the offering is known in the securities industry as a "flipper."

65. To the investment banker, a "flipper" is an undesirable person and is not considered a satisfactory candidate for an allocation in a "hot issue IPO" of securities.

66. Persons who hold for at least one week and persons who hold for at least one month are also categorized by investment bankers and are considered more desirable for the allocation of securities from a "hot issue IPO."

67. Allocation of securities from a "hot issue IPO" to customers who hold tends to assure an excess of purchasers over sellers and to drive the market price of the securities upward.

68. Persons who hold securities from this type of offering for periods long beyond one month are the most desirable purchasers of securities from a "hot issue IPO" because their conduct tends to induce the rise in the market price for the securities above the initial offering price and the maintenance of higher market prices for an extended period of time.

69. During the relevant period, the Underwriter Defendants kept careful records showing the trading activity of all their broker-dealer clients and categorized these clients according to the length of time they would hold securities allocated to them in a "hot issue IPO."

70. After this information was accumulated and the broker-dealer customers categorized, securities in "hot issue IPOs" were sold only to those customers who satisfied the retention criteria for their allocations.

71. In order to assure themselves of a continued supply of investment banking clients, i.e., clients-issuers, and a continuous supply of IPO business, the Underwriter Defendants agreed that they would rigorously apply uniform rules for the allocation of securities in "hot issue IPOs."

Fiduciary Relationship

72. As a public purchaser of many of the IPO securities and a retail customer of two of the Underwriter Defendants, plaintiff reposed trust and confidence in the Underwriter Defendants during the relevant period as the result of the supe-

rior expertise these defendants were reputed to have in the areas of investment research and advice.

73. As retail securities brokers and underwriters, the Underwriter Defendants accepted this role, and assumed a fiduciary responsibility to plaintiff and the other public purchasers of these securities to act in these purchasers' interests when providing investment advice.

Commercial Bribery

74. These investment bankers, known as "underwriters," received bribes from and paid bribes to the Institutional Defendants.

75. In 1998 or earlier, the Institutional Defendants and the Underwriter Defendants participated in an arrangement as follows: the Underwriter Defendants agreed to give the Institutional Defendants favored (exceptionally large) allocations of the IPO securities in exchange for compliance with rules set and enforced by the Underwriter Defendants for the resale of these securities and the division of profits from resale.

76. Underwriters have a practice of allocating the IPO shares they sell differently to purchasers depending on the amount of time the purchasers hold the stock.

77. According to records kept by the underwriters and used by their syndicate divisions, the faster the purchasers resell, the less likely they are to receive an allocation of stock in any future IPO.

78. Accordingly, in order to ensure that they would receive large allocations of stock, the Institutional Defendants agreed to the terms and conditions established by the Underwriter Defendants.

79. The Institutional Defendants agreed to the terms and conditions imposed by the Underwriter Defendants because they knew that the terms and conditions would maximize the price of the IPO security and the Institutional Defendants' profits at sale.

80. Among the terms and conditions required by the Underwriter Defendants in the bribery arrangement were the following:

Timed Resale

81. The Institutional Defendants agreed that, in exchange for the large IPO allocation, they would hold these securities for an extended period of time.

82. The Institutional Defendants agreed that, in exchange for the large IPO allocation, they would not resell the securities until given permission to do so by the Underwriter Defendants' syndicate division.

Split Profits

83. Each Institutional Defendant agreed that, in exchange for the large IPO allocation, it would split their profits on the allocation with the Underwriter Defendant that made the allocation by giving one-third of its profits to that Underwriter Defendant.

Involuntary Purchases

84. Each Institutional Defendant also agreed that, in exchange for the large IPO allocation, it would purchase additional large quantities of the security in the aftermarket, or market for the stock following the IPO.

85. Each Institutional Defendant agreed that, in exchange for the large IPO allocation, it would not resell these additional purchases until they received instructions from the syndicate division.

86. These additional purchases had the effect of sustaining the market price of the stock or driving the price upward.

87. The Institutional Defendants knew they would be guaranteed a profit because the Underwriter Defendants would later instruct them when to sell the purchased stock in order to realize this profit.

88. These practices violated the fiduciary obligations the Underwriter Defendants had to plaintiff and other investors who bought and sold any of the IPO securities in the market and aftermarket that followed each IPO.

89. On information and belief, the Institutional Defendants were willing to conspire with the Underwriter Defendants because they could purchase the hot issue IPO security in one of their smaller funds where it would show to advantage and put the abnormally high commission in one of their largest funds where it would not show.

Inflation of the Stock Prices

90. As part of the bribery arrangement described here, the Underwriter Defendants engaged in numerous practices having a direct inflationary effect on the market prices of the IPO securities. These practices included the following:

Continuous "Buy" Recommendations

91. The Underwriter Defendants agreed among themselves and with the Institutional Defendants that their research departments would issue continuous "buy," "strong buy," and/or "outperform" recommendations for hot issue IPO securities.

92. These favorable recommendations were made without regard for the fundamentals of the issuer, its business and financial prospects, or the expected future price of its securities.

93. These recommendations were issued to broker-dealer clients of the Underwriter Defendants but also to retail customers of the Underwriter Defendants and to other members of the investing public.

94. These recommendations were made in order to sustain or increase the market price of a given hot issue security.

95. Many of the hot issue IPO companies had no existing business and were unsuccessful in developing any business after the offerings of their securities to the public.

96. As a consequence, these issuers had no fundamental financial conditions that justified the market prices for which they traded in the aftermarket.

97. As investment bankers for the companies whose securities were sold in the hot issue IPOs and traded in the aftermarket, the Underwriter Defendants knew that these companies did not have sufficient fundamentals or business prospects to justify the market prices for their securities.

98. Nevertheless, the Underwriter Defendants agreed with the Institutional Defendants that the Underwriter Defendants would direct their analysts to issue continuous "buy" and similar recommendations for designated "hot issue IPOs."

99. In some cases the "hot issue IPO" securities, particularly the high technology internet companies, were sold to the public for IPO prices between $10 and $20.

100. As a result of trading and other activities by the Underwriter Defendants and the Institutional Defendants in the aftermarket, these securities' prices often rose to greater than $100 per share.

101. As a consequence of this conduct, defendants inflated the prices of the IPO securities far above any value relating to the fundamentals of the issuer or any other legitimate indicator of value; and plaintiff and the other class members purchased shares of the IPO securities at significantly inflated prices.

No "Sell" Recommendation

102. After the involuntary purchases described above had sustained or driven upward the market price of the security for an extended period, the price would begin to decline.

103. The prices declined because, among other things, the companies issuing the "hot issue IPO" securities failed to develop financial or business conditions that justified the market price of the securities.

104. The price of the securities would drop below $100 per share and continue in a steady decline, often reaching prices less than $5 per share and in some cases less than $1 per share.

105. Pursuant to the agreements among the Underwriter Defendants, the analysts would repeat the buy recommendation even while the price of the security declined or would in rare cases change the recommendation to a "hold."

106. In even more rare cases but not until after the price had passed well below the initial offering price per share, the analysts for the Underwriter Defendants would change the firm recommendation for the hot issue IPO security to a "sell."

Kickbacks to the Underwriter Defendants
Permission to Sell

107. Pursuant to their agreement with the Underwriter Defendants, the Institutional Defendants held their original allocations and their subsequent involuntary purchases until they received instructions from the Underwriter Defendants that they could sell.

108. When the market price for the "hot issue IPO" security had reached a high level and been sustained at the high level as long as it could, the syndicate departments for the Underwriter Defendants notified the Institutional Defendants that they were free to sell.

109. When the Institutional Defendants sold, they realized substantial profits on both classes of securities, the initial allocations and the subsequent involuntary purchases.

110. In addition to the purchases in the initial allocations, the syndicate departments of the Underwriter Defen-

dants kept records of all other purchases and sales by the Institutional Defendants.

111. This information allowed the syndicate departments of the Underwriter Defendants to calculate the profits realized by the Institutional Defendants.

112. Each Underwriter Defendant determined the amount of each Institutional Defendant's profits and its own share of the Institutional Defendant's profits from participation in hot issue IPO securities transactions.

Split Profits by Abnormally High Commissions

113. After the sales by the Institutional Defendants, the syndicate divisions of the Underwriter Defendants calculated the profit realized by the Institutional Defendant and told it the share of the profit to be remitted to the Underwriter Defendants.

114. Under the commercial bribery arrangement, no Institutional Defendant remitted one-third of its profit by direct payment to any Underwriter Defendant.

115. Instead, each Institutional Defendant directed major purchases and sales of unrelated securities by its largest funds to the Underwriter Defendants, paid unusually large commissions under the negotiated commission structure, and continued to pay unusually large commissions on brokerage business until it had remitted the agreed proportion of its profits to the Underwriter Defendants pursuant to the allocation agreement.

Violation of the Robinson-Patman Act

116. In 1998 or later, the Underwriter Defendants received compensation from the Institutional Defendants in exchange for favored allocations of IPO securities.

117. This arrangement of providing favored allocations in exchange for compensation was designed to facilitate the

receipt of improper profits by both the Underwriter Defendants and the Institutional Defendants in the relevant IPOs.

118. As part of this arrangement, the Underwriter Defendants, acting as the fiduciaries of plaintiff and other public purchasers of securities, encouraged the purchase of the IPO securities and purchased these securities on these purchasers' behalf at prices bearing little relation to the fundamentals or value of the companies issuing the securities.

119. The Underwriter Defendants knew the financial condition of the issuers when the Underwriter Defendants encouraged, required, and engaged in the purchase of the IPO securities.

120. The Underwriter Defendants knew that the encouragement of purchases would maintain the inflated market prices of the IPO securities and would, as a result, yield the Underwriter Defendants and the Institutional Defendants a substantially greater profit than they would receive from the IPO without the purchases.

121. The Underwriter Defendants participated in the bribery arrangement, including encouraging purchases of the IPO securities by plaintiff and other public purchasers and providing favored allocations of IPO securities to the Institutional Defendants in exchange for compensation, in violation of their fiduciary responsibilities to their retail customers and other public purchasers who purchased the IPO securities, including plaintiff and all others similarly situated.

122. By participating in this exchange of compensation, in violation of their fiduciary relationship with plaintiff and other public purchasers, the Underwriter Defendants have committed commercial bribery in violation of Section 2(c) of the Robinson-Patman Act, 15 U.S.C. section 13(c).

123. By acting as co-conspirators in the commercial bribery arrangement, the Institutional Defendants have com-

mitted commercial bribery in violation of Section 2(c) of the Robinson-Patman Act, 15 U.S.C. section 13(c).

124. As a result of the commercial bribery arrangement, the price of the IPO securities was artificially inflated.

125. Plaintiff and the other class members purchased shares of the IPO securities at these artificially inflated prices.

126. As a result, plaintiff and the other class members have been damaged.

WHEREFORE, plaintiff prays for judgment as follows:

(a) declaring this action to be a proper class action;

(b) awarding plaintiff and the members of the Class damages, including treble damages, and pre-judgment and post-judgment interest and costs; including reasonable attorneys' fees, accountants' fees, experts' fees, and other costs and disbursements;

(c) preliminarily and permanently enjoining from continuing the unlawful exchange of compensation; and

(d) awarding any other relief this Court deems proper under the circumstances.

JURY DEMAND

Plaintiff respectfully demands a trial by jury.

Dated: New York, New York
December 12, 2001

BEATIE AND OSBORN LLP
By: /s/ Daniel Osborn
Daniel A. Osborn (DO 2809)
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New York, New York 10175
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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, Northeast Regional Office 233 Broadway New York, New York 10279, Plaintiff, -against- CREDIT SUISSE FIRST BOSTON CORPORATION, Defendant.	:	No. CV ([1:02CV00090]) [Filed January 22, 2002]

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges the following against Credit Suisse First Boston Corporation ("CSFB"):

SUMMARY

CSFB SHARED PROFITS FROM HOT INITIAL PUBLIC OFFERINGS ("IPOS")

1. In exchange for shares in "hot" IPOs, CSFB wrongfully extracted from certain customers a large portion of the profits those customers made by flipping their IPO stock. From at least April 1999 through June 2000, CSFB employees allocated shares of IPOs to over 100 customers who were willing to funnel between 33 and 65 percent of their profits to CSFB. The profits were channeled to CSFB in the form of excessive brokerage commissions generated by the customers in unrelated securities trades that the customers generally effected solely to satisfy CSFB's demands for a share of the IPO profits.

2. The more than 100 customers involved in the conduct alleged in this Complaint were primarily small "hedge funds," private equity funds, and wealthy individuals (the "Customers"). The profit-sharing activity was pervasive in such Customer accounts serviced by CSFB's Institutional Sales Trading Desk, Private Client Services (PCS) Group and Technology PCS Group ("Tech PCS"). The Customers were a small segment of the more than 2400 accounts to which CSFB allocated IPO stock as lead managing underwriter during the relevant time; in no IPO were such Customers allocated more than 10 percent of the IPO stock. Nonetheless, IPO trading was so profitable during this period that the Customers funneled tens of millions of dollars in profits to CSFB through improper commission payments.

NATURE OF THE PROCEEDINGS AND THE RELIEF SOUGHT

3. The Commission brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(f) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(e) and 78u(f), to enjoin CSFB from violating provisions of the federal securities laws and the Conduct

Rules of the National Association of Securities Dealers, Inc. ("NASD"). In addition, the Commission seeks other relief, including, but not limited to, disgorgement and civil penalties, and certain ancillary and further relief as is necessary and appropriate.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e) and 78aa.

5. Venue lies in this Court pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

6. CSFB has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that constitute violations of Rules 2110 and 2330 of the NASD Rules of Conduct, and Section 17(a) of the Exchange Act, 15 U.S.C. § 78q (a), and Rule 17a-3(a)(6) thereunder, 17 C.F.R. § 240.17a-3(a)(6).

DEFENDANT

7. **Credit Suisse First Boston Corporation** is a broker-dealer registered with the Commission pursuant to Section 15 of the Exchange Act, 15 U.S.C. § 78o. CSFB's principal offices are located at 11 Madison Avenue, New York, New York 10010. CSFB provides the full range of services offered by a multi-purpose investment bank, including securities underwriting, sales and trading, and investment banking. CSFB has 15 branch offices in the United States. The majority of the conduct described herein occurred in the New York, Boston, and San Francisco offices.

FACTS

The Initial Public Offering Process at CSFB

8. An IPO is the first public issuance of stock from a company that has not previously been publicly traded. A "hot" IPO is one in which the stock immediately trades at a premium in the aftermarket.

9. During the period of 1999 through 2000, three business units within CSFB had primary responsibility for IPOs: the Global Investment Banking Division ("IBD"), the Equities Division, and the Global Equity Capital Markets Department ("ECM").

10. IBD typically assumed overall responsibility for an IPO from the initial engagement through the registration, marketing and pricing of the securities offered.

11. ECM was responsible for executing the distribution of an issuer's securities, including overseeing the allocation of an issuer's shares. ECM included the Syndicate Desk, which made allocation decisions for institutional accounts.

12. The Equity Sales Department provided brokerage services to CSFB's customers, including access to CSFB-ed offerings. CSFB's equity sales force included research sales people who provided CSFB's research to institutional accounts and marketed IPOs to them; institutional sales traders, who serviced institutional accounts; PCS representatives, who serviced middle market accounts; and Tech PCS representatives, who serviced middle market clients of CSFB's technology group, among other clients.

CSFB's Allocation Process

13. During the relevant time period, apart from the conduct alleged in this Complaint, CSFB regularly relied on the following criteria, among others, to make allocation decisions in IPOs: the level of business an account had done with the firm, the long or short term interest of an account in an issuer, the size of an account's anticipated long term invest-

ment, an account's track record of investment in similar issues, an account's apparent interest in the issuer as evidenced by attendance at roadshows, the account's assets under management, and the existing or potential business relationship between an account and CSFB.

14. CSFB accounts that received IPO allocations fell into two categories: institutional accounts and retail accounts. Institutional accounts ran the gamut from large mutual funds to small hedge funds and private equity funds. During the relevant time period, middle market accounts serviced by the PCS and Tech PCS group were considered retail accounts. These accounts were comprised primarily of small institutions, private equity funds, and high net worth individuals.

15. In CSFB lead-managed IPOs, more than 70% of the shares offered were typically allocated to institutional accounts from the so-called "institutional pot." During the relevant time period, the Syndicate Desk was responsible for allocating shares to institutional accounts. Institutional sales traders and research sales persons relayed information regarding their accounts' indications of interest in a particular IPO to the Syndicate Desk.

16. The PCS and Tech PCS groups were allotted specific percentages of offerings to distribute to covered accounts pursuant to understandings reached between and among ECM, PCS and Tech PCS. In PCS, managers then gave account representatives blocks of stock to allocate among their clients. Tech PCS employees allocated their shares to individual trading accounts and discretionary accounts managed by the Tech PCS group. PCS typically received 5% or less of the offering to allocate and distribute; Tech PCS typically received 3% or less to allocate and distribute.

CSFB's Profit-Sharing Practices

17. Among the reasons that investors sought to obtain IPO stock during the relevant period was the large profit to

be earned by "flipping" the shares if the IPO was successful. That is, some investors hoped to realize quick profits by selling the shares in the immediate aftermarket if the IPO traded at a premium to its offering price.

18. During 1999 and 2000, CSFB capitalized on the unprecedented growth in the new issue market and in the demand for shares in IPOs by using the IPO product to gain additional profits from certain of its smaller, less powerful Customers.

19. Employees of CSFB's ECM, PCS, and Tech PCS divisions informed Customers, both implicitly and explicitly, that they were expected to pay a portion of profits earned on their IPO flipping to CSFB in order to continue to receive allocations in "hot" IPOs.

20. Customers that refused to funnel a portion of their profits to CSFB received smaller allocations, and in some instances were denied allocations altogether. Most Customers, however, paid CSFB willingly, because of the huge profits to be made by flipping their allocations.

21. To maximize commission payments to CSFB, the Customers paid excessive commissions on off-setting trades in large capitalization, highly liquid, exchange-listed securities otherwise unrelated to the IPOs. CSFB employees sometimes assisted certain of the Customers in effecting these off-setting trades.

22. The sole purpose of this trading activity was to generate commissions for CSFB. Customers frequently executed one side of the trade with CSFB (e.g., a purchase at a commission as high as $3.15 per share) and then virtually simultaneously executed the off-setting side of the trade through another broker-dealer (e.g., a sale of the same quantity of the same stock) at the standard commission of $.06 per share.

23. On a number of occasions, both sides of the off-setting trades were executed at CSFB.

24. Although the off-setting purchases and sales were executed at similar prices, payment of significant commissions frequently resulted in net losses to the Customers. Because the trades were executed close in time, however, the transactions were not subject to significant market risk.

25. In order to eliminate any market risks associated with a change in price, some of the Customers often executed off-setting trades utilizing market-on-open or market-on-close trades. In some instances, CSFB employees suggested securities in which the Customers could execute such market-on-open or market-on-close orders.

CSFB Kept Close Watch on Customer Profits

26. CSFB generated documents designed to keep track of the profits such Customers would have earned by selling their allocations at specific times. For example, CSFB generated a document entitled the New Issue Performance Report, which measured the hypothetical profits a Customer would have generated on all CSFB products at various intervals after their purchase, as well as the commissions the Customer had paid to CSFB.

27. Certain institutional sales traders and research sales persons used information contained in the New Issue Performance Report to urge Customers to increase their payments to CSFB in exchange for IPO allocations. In some instances, CSFB personnel told Customers that they should maintain a 3:1 ratio of IPO profit to secondary business.

28. The Tech PCS group generated numerous spreadsheets showing the assumed profits Customers would have earned by selling their IPO allocations on the first day of trading, and comparing the assumed profits to secondary commissions paid to CSFB. The spreadsheets also calculated

the percentage of profits earned versus secondary commissions paid to CSFB on a year-to-date basis.

CSFB Managers and Employees Actively Participated In Profit-Sharing Practices

29. Each of the CSFB business units that participated in the IPO allocation process engaged in explicit and implicit policies and practices to obtain improper payments from Customers in exchange for allocations in hot IPOs. Participation in this conduct extended to senior levels of these business units and was widespread within the relevant business units.

30. Senior executives in managerial and supervisory roles:

- knew of the practices described in this Complaint:
- encouraged many of the practices described in this Complaint;
- directed CSFB employees to urge Customers to maintain specified ratios of commissions to IPO profits; and
- in some instances, personally engaged in some of the practices described in this Complaint.

31. The practices described in this Complaint were not isolated occurrences. Rather, these practices were a fundamental part of the manner in which CSFB dealt with a small but significant portion of its customer base. The prevalence of these practices is reflected in numerous e-mail messages and other communications, such as those set forth below.

32. On November 10, 1999 the head of one business unit told the head of another business unit "we should feed [Customers] they are paying us 35% on deal day."

33. One of these business unit heads characterized allocations as "free money" for the Customers. Employees in this

business unit were given information from the New Issue Performance Report and advised when ratios of IPO profit to secondary business for certain Customers were too high. Employees were directed to tell Customers with high ratios that they needed to increase their business to bring the ratio down.

34. This business unit head told one of his employees that market-on-open orders were used by certain Customers to generate commissions to obtain IPO allocations. He said that market-on-open orders allow Customers to minimize risk while increasing the commissions paid to CSFB.

35. A senior manager described one Customer as being on "the 4 to 1 plan which is generous. This should be really easy and painless. . . . [Customer] simply needs to be told what we have made him vs. what he has paid us. . . . ." In a subsequent e-mail, another senior manager asked "what did he pay us in Jan secondary and how much did he make."

36. CSFB sales traders told Customers that they were expected to pay for IPO stock. For example, one sales trader told a Customer "okay we got another screaming deal and I weasled you guys some stock we've yet to see any leverage out of your guys for the free dough-re-me does it make sense for me . . . to continue to feed your guys with deal stock or should I take the stock to someone who will pay us direct for the allocation."

37. In at least one instance, a CSFB employee directed the flipping activity in a Customer's account in order to ensure that the Customer paid an appropriate amount of its profits to CSFB. The Customer had complained to the employee that he was receiving small IPO allocations. The employee told the Customer that the Customer was not paying back a sufficient amount of profits to CSFB. The employee stated that CSFB expected Customers to pay one-third of their profits back in commissions in return for allocations. Because the Customer believed CSFB was overestimating

his profits, he directed the employee to sell the IPO shares for him and retain one-third of the profits in commissions. The employee agreed. Thereafter, the employee sold the Customer's IPO shares. The employee and Customer engaged in telephone conversations at the end of the trading day to finalize the commissions to be placed on trades to reach the one-third level.

38. The Customer subsequently stopped receiving IPO allocations. Upon asking the employee the reason, the Customer was told that he was required to return fifty percent of his trading profits to receive allocations. The Customer refused and did not receive any further allocations.

39. In another business unit, a senior manager asked customers to place $.50 per share commissions or "put 2%" on trades when Customers had done well in an IPO. The same senior manager regularly called his best Customer to suggest large capitalization, liquid securities for the Customer to trade in order to generate commissions to pay to CSFB.

40. In another instance, an employee in this business unit told a Customer to return from vacation to generate sufficient profits to pay to CSFB in order to receive allocations in upcoming IPOs. The same employee often called the same customer in advance of hot IPOs and said he wanted 50% of the Customer's profit in order to receive IPO allocations in those particular deals.

41. In another business unit, Customers were specifically told that they were expected to pay back fifty percent of their profits to CSFB in order to receive IPO allocations.

42. Employees in this business unit called their Customers on at least a monthly basis and told them that CSFB expected them to pay fifty percent of their IPO profits to CSFB. This business unit aggressively enforced the fifty percent requirement, which was later increased to sixty-five per-

cent. Customers that refused to increase their payments to CSFB were cut off from IPO allocations.

43. For example, on February 10, 2000 a CSFB sales trader in this business unit informed a senior salesman in the unit that the sales trader had spoken to a Customer and "told him that he was very far behind on his commissions and that we expect a 65% return on all money that we make him. I said that he still owes us for the LNUX deal not to mention the deals that have come since then. I then stated that he can do trades to increase his commissions but he will be further cut off from any syndicate in the future." The senior salesman responded "out." The sales trader responded "done."

44. Because of the profits to be made by flipping IPO shares, certain Customers created false corporate identities and often misrepresented the amount of their assets under management and the source of their wealth in order to appear to be larger, institutional accounts, worthy of receiving IPO allocations. CSFB failed to conduct due diligence regarding these Customers to verify that the information supplied on Customers' account opening forms, such as the Customer's identity and amount of assets under management, was accurate.

45. Some CSFB employees were aware of practices described in paragraph 44. For example, an employee in the PCS group told one of his Customers to open a second account using a new corporate identity. The Customer already received allocations through the Institutional Sales Group but opened a second account in order to receive allocations from the PCS group.

The Payments to CSFB Were Significant

46. Customers generally paid commissions of five to six cents per share for transactions executed at CSFB. In order to funnel IPO profits to CSFB, the Customers placed a wide range of excessive commissions on certain trades, frequently paying 10, 20 or even 30 times a normal commission

rate. The Customers also paid excessive markups and mark-downs on transactions in over-the-counter securities.

47. For example, in July 1999, CSFB served as the lead underwriter for several "hot" IPOs including Gadzoox Networks ("Gadzoox") and MP3.com ("MP3").

48. Gadzoox opened on July 20, 1999 and closed at a price of $74.8125, over 256 percent above its IPO price of $21. CSFB, as lead managing underwriter, distributed approximately 3.4 million shares of the 4.025 million Gadzoox shares offered. Of the 3.4 million Gadzoox shares distributed by CSFB, at least 261,025 shares were allocated to Customers that were willing to funnel a portion of their IPO profits to CSFB.

49. MP3 opened on July 21, 1999 and closed at a price of $63.3125, over 126 percent above its IPO price of $28. CSFB distributed 7.2 million of the 10.35 million MP3 shares offered through underwriters. Of the 7.2 million MP3 shares distributed by CSFB, at least 520,170 shares were allocated to Customers that were willing to funnel a portion of their IPO trading profits to CSFB.

50. In order funnel profits to CSFB, the Customers that had received allocations of shares in these two IPOs engaged in large transactions in highly liquid large capitalization securities at excessive commission rates. For example, over the three-day period of July 19, 1999 through July 21, 1999, one of the PCS Customers that had received a 4,000 share allocation of Gadzoox and a 10,000 share allocation of MP3 from CSFB paid CSFB at least $425,700 by making the following trades:

Date	Commission Per Share	Security	Number of Shares
7/19/99	$1.00	Coca Cola	25,000
7/20/99	$1.00	Coca Cola	69,700

7/21/99	$1.00	Coca Cola	31,000
7/21/99	$1.00	Conoco	250,000
7/21/99	$1.00	Allstate	25,000
7/21/99	$1.00	Philip Morris	25,000

51. Similarly, on July 19, 1999 a Tech PCS Customer that had received a 2,500 share allocation of Gadzoox and a 5,500 share allocation of MP3 from CSFB paid at least $124,000 to CSFB by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
7/19/99	$ .50	AT&T	50,000
7/19/99	$ .50	IMC	10,000
7/20/99	$ .63	Philip Morris	40,000
7/20/99	$ .75	AT&T	20,000
7/21/99	$ .90	Compaq	60,000

52. Another PCS Customer that had received a 1,500 share allocation of Gadzoox and a 5,700 share allocation of MP3 from CSFB paid CSFB at least $183,750 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
7/20/99	$ .75	Compaq	15,000
7/20/99	$ .75	Disney	30,000
7/21/99	$1.00	Allstate	25,000
7/21/99	$1.00	Wells Fargo	30,000
7/21/99	$1.00	Disney	30,000

7/21/99	$1.00	Philip Morris	20,000
7/21/99	$1.00	Pfizer	30,000
7/21/99	$ .50	K Mart	30,000

53. Another Tech PCS Customer that had received a 2,000 share allocation of Gadzoox and a 5,000 share allocation of MP3 from CSFB paid CSFB at least $187,875 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
7/20/99	$ .75	Chase Manhattan	5,000
7/20/99	$ .75	Genentech	4,000
7/20/99	$ .75	Cendant	26,000
7/20/99	$ .75	Compaq	9,000
7/20/99	$ .75	Hewlett Packard	6,000
7/20/99	$ .75	IBM	11,000
7/20/99	$ .75	Lucent	14,000
7/21/99	$ .75	Citigroup	84,500
7/21/99	$ .75	Tyco	4,000
7/21/99	$ .75	Disney	7,000
7/21/99	$ .75	MedPartners	21,000
7/21/99	$ .75	Pepsico	16,000
7/21/99	$ .75	AT&T	8,000
7/21/99	$ .75	Compaq	35,000

54. Some of the most dramatic instances of improper profit-sharing occurred in connection with the VA Linux Systems, Inc. ("Linux") IPO. CSFB, as lead underwriter, distributed approximately 4.1 million shares of the 5.060 million shares offered through underwriters. The Linux IPO was priced at $30 per share. The IPO opened on December 9, 1999 and closed at a price of $239.25 per share, an unprecedented increase of over 697 percent. In order to funnel IPO profits to CSFB, Customers that received at least 405,398 shares engaged in large transactions in highly liquid large capitalization securities at excessive commission rates.

55. The El Sitio IPO also opened on December 9, 1999 and closed at a price of 33.125, 108 percent above its offering price. As lead underwriter, CSFB distributed 7.5 million shares of the 9.43 million shares distributed by underwriters. CSFB distributed at least 627,378 shares to Customers willing to funnel a portion of their profits to CSFB.

56. For example, on December 9, 1999, an Institutional Customer that had received a 13,500 share allocation of Linux and a 20,000 share allocation of El Sitio from CSFB paid CSFB $1 million by placing a commission of $.50 per share on 2 million shares of Compaq.

57. A Tech PCS Customer that had received an 8,000 share allocation of Linux and a 30,000 share allocation of El Sitio from CSFB paid CSFB at least $819,800 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
12/9/99	$ 2.00	EMC	50,000
12/9/99	$ 2.00	General Electric	85,000
12/9/99	$ 2.00	IBM	50,000
12/9/99	$ 1.50	Nokia	90,000

12/9/99	$ 1.00	Ford	50,000
12/9/99	$ 1.00	General Motors	20,000
12/9/99	$ 1.00	Home Depot	45,000
12/9/99	$ 1.00	Proctor & Gamble	40,000
12/10/99	$ .94	Sprint	45,000
12/10/99	$ .94	AT&T	45,000
12/10/99	$ .94	Time Warner	40,000
12/10/99	$ .94	Tyco	40,000

58. Another Institutional Customer that had received a 12,500 share allocation of Linux from CSFB paid CSFB at least $565,000 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
12/9/99	$ 2.75	AT&T	50,000
12/9/99	$ 2.70	Citigroup	50,000
12/9/99	$ 1.25	Compaq	100,000
12/9/99	$ .50	K Mart	50,000
12/9/99	$ .80	Kroger Co.	100,000
12/10/99	$ .50	Kroger Co.	125,000

59. Another Institutional Customer that had received an 8,500 share allocation of Linux from CSFB paid CSFB at least $402,650 by engaging in the following transactions.

Date	Commission Per Share	Security	Number of Shares
12/9/99	$ .48	America Online	50,000
12/9/99	$ .19	K Mart	150,000
12/9/99	$ .48	Citigroup	200,000
12/9/99	$ .43	Disney	150,000
12/9/99	$ .22	Kroger	120,000
12/9/99	$ .48	National Semicon-ductor	20,000
12/9/99	$ .38	Tyco	150,000
12/10/99	$ .29	America Online	20,000
12/10/99	$ .29	Lucent	20,000
12/10/99	$ .29	Micron	10,000
12/10/99	$ .29	National Semicon-ductor	10,000
12/10/99	$ .29	Citigroup	100,000
12/10/99	$ .29	Disney	50,000
12/10/99	$ .29	Tyco	100,000
12/10/99	$ .15	K Mart	45,000

60. Another Institutional Customer that received a 12,500 share allocation of Linux and a 10,000 share allocation of El Sitio from CSFB paid CSFB $438,960 on December 9, 1999 and $295,600 on December 10. This Customer paid commissions as high as $3 per share and executed its

off-setting trades at CSFB. On December 9, the Customer bought 38,000 shares of IBM at a price of 113 and paid a commission of $2.85 per share. On the same day, the Customers sold 36,000 shares of IBM at a price of 119.54 and paid a commission of $3 per share. On December 10, the Customer bought 25,000 shares of Time Warner at a price of 67.5 and paid a commission of $1.68 per share. On the same day, the Customer sold 25,000 shares of Time Warner at a price of $68 per share and paid a commission of $1.68 per share.

61. CSFB also shared in the profits of its Customers in connection with the two IPOs that opened on March 9, 2000, Selectica and OTG Software ("OTG").

62. The Selectica IPO closed at a price of $141.23, over 370 percent above its offering price of $30. CSFB, as lead managing underwriter, distributed approximately 3.9 million shares of the 4.6 million Selectica shares offered. Customers who were willing to pay a portion of their profits to CSFB received at least 324,903 shares in the Selectica IPO.

63. The OTG IPO closed at $56.18, over 195 percent above its offering price of $19. As lead underwriter, CSFB distributed approximately 4.9 million of the 5.75 million OTG shares offered. Customers who were willing to pay a portion of their profits to CSFB received at least 471,312 shares in the OTG IPO.

64. An Institutional Customer that had received a 5,000 share allocation of Selectica and a 10,000 share allocation of OTG paid CSFB at least $278,600 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
3/10/00	$ .38	American Home Prod-ucts	65,000
3/10/00	$ .38	America Online	70,000
3/10/00	$ .38	Citigroup	80,000
3/10/00	$ .38	Pfizer	200,000
3/10/00	$ .38	AT&T	125,000
3/10/00	$ .38	Tyco	60,000
3/10/00	$ .38	US West	80,000
3/10/00	$ .38	Charles Schwab	10,000
3/10/00	$ .29	Xerox	50,000
3/10/00	$ .19	Edison	10,000

65. Another Institutional Customer that had received a 5,000 share allocation of Selectica and a 10,000 share allocation of OTG from CSFB paid CSFB $178,000 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
3/10/00	$ .60	Lucent	70,000
3/10/00	$ .60	Pfizer	50,000
3/10/00	$ .60	AT&T	80,000
3/10/00	$ .40	Compaq	100,000
3/10/00	$ .18	Mattel	100,000

66. A Tech PCS Customer that had received a 7,000 share allocation of Selectica and a 15,000 share allocation of OTG from CSFB paid CSFB at least $166,000 by engaging in the following transactions:

Date	Commission Per Share	Security	Number of Shares
3/10/00	$ .75	IBM	50,000
3/10/00	$ .75	Qwest	50,000
3/10/00	$ .75	US West	50,000
3/10/00	$ .60	Ford	10,000
3/10/00	$ .60	Federal National Mortgage Association	50,000
3/10/00	$ .35	Phillip Morris	50,000

67. The payments described in paragraphs 46 through 66 are representative examples of CSFB's practices during the relevant period.

68. CSFB recorded the payments described in paragraphs 46 through 66 as commissions when, in fact, the payments were made as profit-sharing in exchange for IPO allocations.

69. The Commission understands that, simultaneously with the filing of this Complaint, CSFB is entering into a Letter of Acceptance, Waiver and Consent ("AWC") with NASD Regulation, Inc. ("NASD Regulation") arising from the same matters alleged herein. In addition to the remedies imposed in the AWC, the relief sought by the Commission pursuant to this Complaint is necessary and appropriate in the

public interest and for the protection of investors, within the meaning of Section 21(f)(2) of the Exchange Act.

FIRST CLAIM FOR RELIEF
CSFB VIOLATED RULE 2110 OF THE CONDUCT RULES OF THE NASD

70. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

71. NASD Conduct Rule 2110 requires members to observe high standards of commercial honor and just and equitable principles of trade.

72. CSFB violated Rule 2110 by engaging in the conduct described in paragraphs 1 through 69 above.

SECOND CLAIM FOR RELIEF
CSFB VIOLATED RULE 2330 OF THE NASD RULES OF PRACTICE

73. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

74. NASD Conduct Rule 2330(f) prohibits a member or any person associated with a member from sharing directly or indirectly in the profits or losses of a customer, unless certain conditions not applicable here are met.

75. As described in paragraphs 1 through 69, from at least April 1999 through June 2000, CSFB shared directly or indirectly in the profits or losses in accounts of customers carried by CSFB, in violation of Rule 2330 (f).

THIRD CLAIM FOR RELIEF
CSFB VIOLATED SECTION 17(a) OF THE EXCHANGE ACT, 15 U.S.C. § 78q(a) AND RULE 17a-3(a)(6) THEREUNDER

76. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

77. As alleged above, commencing in or about April 1999, CSFB, while it was, among other things, a broker and

dealer transacting a business in securities through the medium of members of national securities exchanges and a broker and dealer registered with the Commission pursuant to Section 15 of the Exchange Act, 15 U.S.C. § 78o, failed to accurately make and keep for prescribed periods such records, furnish such copies thereof and make, disseminate and file such reports as the Commission by rule, has prescribed as necessary and appropriate in the public interest and for the protection of investors.

78. Rule 17a-3, 17 C.F.R § 240.17a-3(a)(6), requires a broker-dealer to maintain a record of each order received for the purchase and sale of a security that includes the terms and conditions, including, but not limited to, the commission, mark-up, or mark-down associated with such order.

79. As described above, CSFB failed to reflect accurately the terms and conditions of its orders because it failed to record that the commissions, markups and markdowns paid by certain Customers were profit-sharing in exchange for IPO allocations.

80. By reason of the foregoing, CSFB directly and indirectly violated, and unless enjoined will again violate, Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-3(a)(6) thereunder, 17 C.F.R. § 240.17a-3(a)(6).

RELIEF SOUGHT

WHEREFORE, plaintiff Commission respectfully requests that this Court enter judgment:

1. permanently restraining and enjoining CSFB, directly or indirectly, from violating Rules 2110 and 2330 of the NASD Conduct Rules and Section 17 (a) Exchange Act, 15 U.S.C. § 78q and Rule 17a-3, 17 C.F.R § 240.17a-3 thereunder;

2. directing CSFB to disgorge the ill-gotten gains obtained from its conduct, plus prejudgment interest thereon;

3. requiring CSFB to pay a civil penalty pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d);

4. issue an order requiring CSFB to institute policies and procedures to prevent the violations described herein from occurring in the future and retain an independent consultant to audit CSFB's allocation procedures;

5. granting such other and further relief as the Court may deem just and proper; and

6. retaining jurisdiction of this action in order to implement and carry out the terms of any Orders which may be entered herein.

Dated: January 22, 2002

Respectfully submitted,

/s/ Wayne M. Carlin

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All attorneys listed are covered by LCvR 83.2(e) as attorneys employed by an agency of the United States.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: INITIAL PUBLIC OFFERING ANTITRUST LITIGATION	:	Case No. 01 CIV. 2014 (WHP)
Pfeiffer, Plaintiff v. Credit Suisse First Boston Corp., et al., Defendants	:	Case No. 01 CIV. 11420 (WHP) Order

WILLIAM H. PAULEY III, District Judge:

The motion of plaintiff Milton Pfeiffer for an order permitting him to assert a claim under Section 2(c) of the Robinson-Patman Act, 15 U.S.C. Section 13(c), was heard on May 16, 2002.

Having heard oral argument from Plaintiff Pfeiffer's counsel, the Executive Committee, and Defendants' counsel in the Initial Public Offering Antitrust Litigation, and having considered the papers filed by the parties, the Court grants Plaintiff Pfeiffer permission to prosecute his separate action asserting a claim under the Robinson Patman Act on a coor-

dinated basis, so as to avoid any duplication on the part of the parties or the Court. Plaintiff Pfeiffer need not re-file the Robinson-Patman Act complaint; and prior service in Case No. 01-Civ.-11420 (S.D.N.Y.) (WHP) shall be deemed applicable to action authorized by this order.

The Pfeiffer action is stayed pending determination of the Defendants' omnibus motion to dismiss the Consolidated Amended Complaint filed by the Executive Committee. If the Court's ruling on that motion does not dispose of Pfeiffer's action, Defendants in the Pfeiffer action shall be entitled to move to dismiss the Pfeiffer complaint with respect to any issues raised specifically by that complaint.

The actions are otherwise to proceed on the time schedule established by this Court.

Dated: June 4, 2002
New York, New York

SO ORDERED:

/s/ William H. Pauley
William H. Pauley III
U.S.D.J.

IN THE SUPREME COURT OF THE UNITED STATES

CREDIT SUISSE FIRST BOSTON LTD., ET AL.,

Petitioners,

v.

GLEN BILLING, ET AL.,

Respondents.

No. 05-1157

December 7, 2006

The motion of NYSE Group, Inc. for leave to file a brief as *amicus curiae* is granted. The motion of National Association of Securities Dealers, Inc. for leave to file a brief as *amicus curiae* is granted. The motion of Securities Industry Association, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is granted. The Chief Justice took no part in the consideration or decision of these motions and this petition.